

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (DAYTON)**

ART SHY, et al.

Plaintiffs,

vs.

NAVISTAR INTERNATIONAL  
CORPORATION, et al.

Defendants.

Case No. 3:92-CV-00333

District Judge Walter H. Rice

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CLASS REPRESENTATIVES'  
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT  
AGREEMENT AND ATTORNEY FEES AND EXPENSES**

The Court's Order granting preliminary approval of the proposed Settlement<sup>1</sup> (Doc. 602) required in part: 1) Navistar to provide proof of compliance with the Notice Plan no later than May 26, 2022; and 2) papers in support of the Settlement to be filed no later than 14 days prior to the June 9, 2022 Fairness Hearing (which is again May 26, 2022). Class Representative's motion for final approval (Doc. 611), filed March 28, 2022, satisfied both of the above requirements. The attached declaration of Brian R. Delphey (Doc. 611-2) provided proof of compliance with the Notice Plan. The memorandum, along with the declarations from Class Counsel and Class Representatives, supported the Settlement. (Doc. 611-1 through 611-7).

The preliminary approval Order set an objection deadline of April 11, 2022. The provision for further papers in support of the Settlement by May 26, 2022 is typical in a class action of this

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<sup>1</sup> Capitalized terms not defined herein are as stated in the Class Settlement Agreement filed as Exh. 1 to the preliminary approval memorandum (Doc. 598-2) and the preliminary approval memorandum (Doc. 598-1).

nature, in that it allows Class Counsel to respond to any objections raised to the Settlement. While it is a rare settlement that proceeds without *any* objection, that is the case here. No objection has been submitted, either before or after the deadline. Second Supplemental Declaration of W.B. Markovits (“Second Supp. Markovits Dec.”) ¶ 2. This in itself is a strong indicator of the fairness, reasonableness and adequacy of the Settlement. *See In re Big Lots, Inc. S’holder Litig.*, No. 2:12-CV-445, 2018 WL 11356561, at \*3 (S.D. Ohio Aug. 28, 2018).

Class Counsel provides this filing primarily to update the Court regarding Class Member response and attorneys’ fees and expenses.<sup>2</sup> The attached declaration of Brian Delphey details Class Member activity since March 20, 2022 with regard to use of the toll-free hotline and website access. Supplemental Declaration of Brian R. Delphey, ¶¶ 4-8. Class Member response continues to be positive. *Id.*, ¶ 6. Class Counsel’s attorneys’ fees stand at \$525,863.50 and their expenses stand at \$60,007.23 as of May 25, 2022. Second Supp. Markovits Dec., ¶ 3. Class Counsel will continue to accrue attorneys’ fees and expenses as this matter proceeds, but expect to stay well below the agreed upon cap.

Respectfully submitted,

/s/ W.B. Markovits

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<sup>2</sup> Per the direction of the Court at the March 24, 2022 conference, Class Counsel will submit by June 6, 2022 a motion to amend, addressing some minor clerical corrections that should be made to certain settlement-related documents, along with a proposed order for final approval that attaches clean copies of settlement-related documents.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2022, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will provide notice of the filing to all parties of record. Parties may access the filing through the Court's CM/ECF system.

/s/ W.B. Markovits  
W.B. Markovits (0018514)